

**State of New Mexico  
Primary Review  
Title IV-E Foster Care Eligibility  
Report of Findings for  
October 1, 2011 through March 31, 2012**

## **Introduction**

During the week of July 29, 2012, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the New Mexico Children, Youth and Families Department (CYFD) and was completed by a review team comprised of representatives from CYFD, the New Mexico Supreme Court's Administrative Office of the Courts, CB Central and Regional Offices, and ACF Regional Office of Grants Management.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the New Mexico CYFD title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act) and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children.

## **Scope of the Review**

The primary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month period under review (PUR) of October 1, 2011 – March 31, 2012. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which included seventy nine (79) from the initial sample. One (1) oversample case was reviewed when one (1) sample case was excluded because no title IV-E maintenance payments were made for the child during the PUR. The State provided documentation to support excluding the case from the review sample and replacing it with a case from the oversample.

In accordance with Federal provisions at 45 CFR §1356.71, the State was reviewed according to the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(1) and (2) and (c), respectively;
- Voluntary placement agreements as set forth in §472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State title IV-A plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);

- Placement in a licensed foster family home or child care institution as defined in §472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child's foster care placement as required at 45 CFR §1356.30.

Case file information of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider's file information also was examined to ensure the foster family home or child care institution where the child resided during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child were reviewed to verify that the expenditures were allowable under title IV-E and to identify underpayments that were eligible for additional claiming. A sample case was assigned an error rating if the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was paid. A sample case was cited as non-error with an ineligible payment when the child was not eligible on the activity date outside the PUR or the child was eligible in the PUR on the service date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity. In addition, underpayments were identified for a sample case when allowable title IV-E maintenance costs were not claimed by the State for an eligible child during the two year filing period specified in 45 CFR §95.7, unless the title IV-E agency elected not to claim the payment or the filing period had expired.

### **Compliance Finding**

The review team determined that 79 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. One error case was identified following the review. In addition, five (5) non-error cases were ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments associated with the error case and the non-error cases with ineligible payments are being disallowed. Because the number of cases in error is fewer than four (4), New Mexico CYFD is in substantial compliance for the PUR.

### **Underpayments**

One (1) case was identified to have a period of eligibility for which the State did not claim allowable title IV-E maintenance payments. In accordance with Federal regulations at 45 CFR §95.7, CYFD may claim the eligible payments by filing an increasing adjustment on Form CB-496, "Title IV-E Programs Quarterly Financial Report" in the next quarter, but no later than two years after the calendar quarter in which the State made the expenditure.

### **Case Summary**

The following charts record the error case, the cases with ineligible payments, non-error case with an underpayment, reasons for the improper payments, improper payment amounts, and Federal provisions for which the State did not meet the compliance mandates.

**Error Case**

<b>28</b>	Foster care maintenance payments continued to the Child Care Institution after the child moved to a relative home. [§475(4)(A)of the Act; 45 CFR §1356.60(a)(1)(i)]  Ineligible period: 02/23/2012 through 02/29/2012	\$78 Maintenance
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**Non-error Cases with Ineligible Payments**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
<b>04</b>	Foster care maintenance payment was made for a period before all eligibility requirements were met. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.60(a)(1)(i)]  Ineligible period: 09/28/2010 through 09/30/2010	\$25 Maintenance
<b>49</b>	Foster care maintenance payment was made for a period before all eligibility requirements were met. [§472(a)(2)(A)(ii)of the Act; 45 CFR §1356.60(a)(1)(i)]  Ineligible period: 02/23/2010 through 02/28/2010	\$46 Maintenance
<b>59</b>	Foster care maintenance payment made for a period before all eligibility requirements met. [§472(a)(2)(A)(ii)of the Act; 45 CFR §1356.60(a)(1)(i)]  Ineligible period: 12/31/12	\$12 Maintenance
<b>64</b>	Foster care maintenance payment was made for a period before all eligibility requirements were met. [§472(a)(2)(A)(ii)of the Act; 45 CFR §1356.60(a)(1)(i)]  Ineligible period: 06/29/11 and 06/30/2011	\$25 Maintenance
<b>OS1</b>	Foster care maintenance payments were made for two providers for the same period. [§475(4)(A)of the Act; 45 CFR §1356.60(a)(1)(i)]  Ineligible period: 10/23/2010 through 10/26/2010	\$50 Maintenance

Total

\$236 Maintenance

### Underpayment Case

Sample Number	Improper Payment Reason	Improper Payments (FFP)
21	-The child was eligible for title IV-E but no foster care maintenance payments were made. [§475(4)(A) of the Act; 45 CFR §1356.60(a)(1)(i)] Eligible period: 09/07/2011 – 09/30/2011	\$270 Maintenance

Total: \$ 270 Maintenance

### **Strengths and Promising Practices**

The following positive practices and processes of the CYFD title IV-E foster care eligibility program were observed during the review.

#### Eligibility Unit:

The utilization of specialized eligibility staff to complete the title IV-E eligibility determination process is an asset for CYFD. The impact of these staff on practice in the field was evidenced by the content of the records reviewed. Each record reflected the effort of the worker to collect and report the information necessary to make an accurate and timely determination of eligibility. From the review, it seems the caseworkers have incorporated the data collection steps required to determine eligibility habitually in their work when placing a child or children. The dedication of specialized staff resources to the program reduces the possibility of ineligible or erroneous title IV-E foster care maintenance payments, as reflected in the few and small dollar amount of payments or eligibility issues identified during this review.

#### Affidavits:

Affidavits were detailed regarding case circumstances, often providing an extensive case history of the family, efforts made by the agency to prevent removal or facts in support of why such efforts were not reasonable, and the facts to support a contrary to the welfare finding for the children in the home. Affidavits also included the facts found for AFDC eligibility, family member's income, and if the children were deprived of parental support. The affidavits frequently were strong in providing facts to the court to support the contrary to the welfare and reasonable efforts for removal findings. This included circumstances such as drug testing, services to the family in the home, prior referrals, and results of family-centered meetings. Additionally, affidavits detailed when the children had different fathers and those fathers' status and locations related to the children. Most affidavits noted the response to questions of Native American heritage and applicability of the Indian Child Welfare Act (ICWA). Most affidavits provided the actual date the child was removed from the home which is excellent best practice. The CYFD caseworkers and agency attorneys have made inclusion of this degree of information in affidavits and petitions a standard practice in their work.

#### Court Orders:

Ex Parte Orders clearly stated the courts' determinations regarding contrary to the welfare and the reasonable efforts to prevent removal of the children. The Ex Parte Orders either directly referenced the facts recorded in the affidavit or included the relevant facts from the affidavit. In some cases the Ex Parte Order included the date the judge gave the order. That is good practice as it factually establishes the date of required judicial determinations reducing the ambiguity of less credible means of recording that date. Most Permanency Planning Hearing orders contained language that documented the courts' consideration of the permanency plan and efforts to carry out the plan. The courts' findings that reasonable efforts to achieve the permanency plan have been made by the agency were well documented in each order. The orders often referenced or repeated facts from the Judicial Review and Permanency Hearing Report by the caseworker.

Several court orders included in the body of the order the child(ren)'s date of birth and the date of the court's judgment. Including this level of detail in the actual writing of the order is an excellent practice. Extending this practice to all orders statewide would only strengthen the State's practice. The adjudication orders from Doña Ana County included findings that referenced the statutory definitions of child abuse and neglect. Such documentation is very valuable in that it unequivocally documents the court's decision. Extending that practice to adjudicatory orders around the state is encouraged.

The development of detailed, child-specific court orders appears to be due to the focused work of the CYFD Children's Attorneys and training delivered by the IV-E Eligibility Unit staff. Their combined efforts to ensure all agency staff and court personnel understand the importance of documenting the factual circumstances of each child contribute to such orders. Participation of CYFD leadership in statewide stakeholder groups including the New Mexico Court Improvement Program, Citizen's Review Board and regional staff with local groups supports the work of the Children's Attorneys and Eligibility staff.

#### Permanency Planning Hearings:

The hearings found in the case file information provided for this review were held approximately every 5.5 months, more frequently than required by Federal guidelines. That is a good practice which can contribute to timely permanency for children. As with the affidavits, the agency's permanency hearing reports to the court were detailed and provided the court sufficient facts to make a finding. Often the diligent work of the CYFD field staff documented in these orders reflected sound practice. CYFD policy guides the work of staff with children and families and provides the structure and direction which contributes to the evidence of sound practices found during the review. The policy bureau and CYFD leadership worked with the New Mexico Legislature over the last few years to revise the children's code to support improved practice.

#### Income Eligibility/AFDC Documentation:

The path to eligibility was documented in each case reviewed. The history of income, deprivation, employment, family supports, and other data was well documented in the AFDC eligibility narrative. Family and Child Tracking System (FACTS) screen shots were provided that documented and supported the eligibility narrative. The information sharing found between various state agency data systems for verification of income,

employment, family support services, housing, and Supplemental Security Income (SSI) helps the eligibility determination staff work efficiently. This ready access allows for verification of information obtained by the agency in a timely fashion and reduces the chance of ineligible payments or under-claiming by the State. Another good practice included CYFD accessing the State IV-D agency for support in locating absent parents. The efforts of the eligibility unit and the training provided field staff was reflected in the cases reviewed.

#### Eligible Claiming:

The 2009 review found a number of claims for vacation, holiday, and youth skills training that were found to be ineligible. Through the aforementioned policy revisions, and efforts of CYFD leadership, financial management and the eligibility unit staff, these ineligible payments have been eliminated. This demonstrates the commitments of CYFD to ensuring IV-E claims are allowable and accurate.

### **Recommendations for Further Improvement**

The findings of this review indicate the State could move even further towards excellence in foster care maintenance eligibility and claiming. The items below will support positive outcomes in the future reviews.

#### Foster Care Placement Provider Licensure/Approval Requirements; and Safety Requirements of Provider:

Currently, the State is in compliance with federal criminal background check requirements for proof of initial checks prior to placement. There are means of notice should a change in criminal status of a foster parent or facility staffs occur, but CYFD does not have policy or a formal process to receive such information and, therefore, it is not documented in the case record. The following are recommendations to address this.

- Implementation of a process through legislation or rule for reassessing the criminal history of foster parents and facility staff periodically would document the State's commitment to ensuring safety of the children it must place in foster homes or child care institutions.
- Develop documented agreements with State law enforcement and licensing agencies requiring that any new arrest, indictment or license status change of foster parents and institution staff will be immediately reported to CYFD to enhance the safety of children.
- The current safety documentation relies on facility records for source documents on criminal background check results rather than agency possessing source documents. These circumstances require that a licensing representative go on-site at the facility to verify those records and document that verification. The records themselves are not available at the licensing agency office. Ready access to such source documents and automated tracking of the source documents is a much stronger and reliable method of documenting and demonstrating these safety requirements are met.

#### Error Case/Ineligible Payments:

The review found five (5) non-error cases that were ineligible for Federal funding for a period of claiming. The ineligible payments were the agency claiming foster care maintenance payment for a period before the child met all of the title IV-E eligibility requirements. The ineligible periods in each case were in the month before the eligibility requirements were met. Four (4) cases during the 2009 eligibility review were identified as having ineligible payments for this reason. The agency is reminded that §472 of the Act permits States to claim title IV-E maintenance payments from the first day of placement in the month in which all title IV-E eligibility criteria are met. However, title IV-E maintenance payments are not permitted for a period that is in the month before the month the child meets all of the eligibility criteria for title IV-E. The one (1) error case and one (1) other ineligible payment case involved payments continuing to a provider after the child had left the foster home or child care facility. The following recommendations could help prevent these kinds of ineligible payments.

- A complete placement history that shows all of the placements of the child, regardless of what type of placement in a single screen shot or other record can help avoid duplicative or otherwise ineligible payments.
- An edit in FACTS to prevent claiming title IV-E maintenance prior to a complete eligibility determination would prevent the kinds of “end of month” payment errors found in the ineligible payments during this review.
- A Continuous Quality Improvement Unit annual review of a sample of eligibility cases using the title IV-E instrument will help ensure ongoing compliance with all Federal requirements and provide early notice if areas of the State are experiencing difficulty achieving compliance.

## **Disallowances**

A disallowance in the amount of \$236 in maintenance payments is assessed for title IV-E foster care payments claimed improperly for the error and non-error cases. The total disallowance as a result of this review is \$236. Since the amount of disallowed funds was previously included in Federal payments made to the State, CYFD must repay these funds by including a prior period decreasing adjustment on the quarterly report of expenditures Form CB-496, “Title IV-E Programs Quarterly Financial Report” Section A, line 1, Columns (C) and (D). Form CB-496, must be submitted within 30 days of the date of this letter in order to avoid the assessment of interest.

## **Next Steps**

The Children’s Bureau (CB) Region VI staff will continue to monitor the issues identified through the title IV-B and IV-E State Plans and the Court Improvement Project. CB will also remain available to provide technical assistance as requested by the State.